

DRAFT: May 5, 1995

**NONCOMPETITION AND NONSOLICITATION AGREEMENT**

This NONCOMPETITION AND NONSOLICITATION AGREEMENT ("Agreement") is made as of May \_\_, 1995 among America Online, Inc., a Delaware corporation ("AOL"), AOL Acquisition Corp., a California corporation ("Sub"), and Brewster Kahle ("Participant").

**RECITALS**

A. This Agreement is entered into in connection with an Agreement and Plan of Reorganization (the "Plan") dated as of May \_\_, 1995, among AOL, Sub and Wide Area Information Servers, Inc., a California corporation ("WAIS"), pursuant to which Sub is to merge with and into WAIS. The effective date of this Agreement will be the date the merger becomes effective under the terms of the Plan (the "Effective Date"). Should the Plan be terminated prior to the effectiveness of the merger, this Agreement shall be of no further force or effect.

B. Participant is the President of WAIS and has been actively involved in the operations of WAIS. To preserve and protect the intangible assets of WAIS, including WAIS's good will, customers and trade secrets of which Participant has knowledge, and in consideration for AOL's and Sub's entering into and performing under the Plan, the parties hereto enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing background and the mutual agreements of the parties contained herein, AOL, Sub and Participant hereby agree as follows:

1. Covenant.

(a) From the Effective Date until the ~~date specified below~~ **expiration of the Non-Compete Period (as hereinafter defined)**, Participant shall not, directly or indirectly, individually or as an employee, partner, officer, director or shareholder or in any other capacity whatsoever of or for any person, firm, partnership, company or corporation other than AOL or its subsidiaries (i) own, manage, operate, sell, control or participate in the ownership, management, operation, sales or control of or be connected in any manner with any business engaged in (A) publishing intellectual property on the Internet, or (B) the design, research, development, marketing, sales, or licensing of, or any systems integration, consulting or other services relating to or competitive with any computer program or products created, distributed or known by Participant to be under development by AOL or any of its subsidiaries or by WAIS prior to the termination of Participant's employment with AOL and its subsidiaries, or (ii) recruit, attempt to hire, solicit, assist others in recruiting or hiring, or refer to others concerning employment of, any person who is or was, an employee of WAIS or AOL or any of its subsidiaries or induce or attempt to induce any such employee to terminate his or her employment with WAIS, AOL or any of its subsidiaries; provided that, if Participant's employment with AOL and its subsidiaries is terminated without cause by AOL and/or its subsidiaries, then during and with respect to the third year **or any portion thereof** of the period following ~~such termination~~ **the Effective Date, if**

applicable, through and including the expiration of the Non-Compete Period~~(as hereinafter defined)~~, AOL shall (A) pay or cause to be paid to Participant an amount equal to the same base salary and provide the same benefits, excluding bonuses, as paid and provided to Participant by AOL or its subsidiaries at the time of such termination, on the same terms, including timing of payments and otherwise, as said amounts were paid and benefits provided to Participant during Participant's employment with AOL or its subsidiaries and (B) shall continue the vesting of Participant's stock options on the same basis as such stock options vested while Participant was employed by AOL or its subsidiaries. ~~The foregoing limitation will apply until~~ **Notwithstanding anything else to the contrary in this Agreement, this Agreement (other than Section 2 hereof) shall terminate upon** the earlier of (i) the third anniversary of the Effective Date and (ii) the later of (A) the second anniversary of the Effective Date and (B) the first anniversary of Participant's termination of employment as an employee of AOL and its subsidiaries (the "Non-Compete Period").

(b) The foregoing restrictions will not apply to Participant's personal investments in publicly traded corporations regardless of the business they are engaged in, provided that Participant does not at any time own in excess of one percent (1%) of the issued and outstanding stock of any such corporation.

2. Other Agreements. Participant represents that Participant has no other agreements or commitments that would hinder the performance of Participant's obligations under this Agreement and Participant will not enter into any such agreements. Participant will indemnify AOL and hold it harmless from any claims, damages, losses and expenses incurred by AOL as a result of any breach of Participant's representations and obligations under this Section 2.

3. AOL Agreements. Participant shall enter into AOL's standard Confidentiality, Non-Competition and Proprietary Rights Agreement, which is attached hereto as Exhibit A; provided that Sections 10, 13 and 14 shall be deleted from such agreement as to Participant.

4. No Obligation to Employ. Nothing in this Agreement shall confer or be deemed to confer on Participant any right to continue in the employ of, or to continue in any other relationship with AOL, Sub or any parent, subsidiary or affiliate of AOL or Sub, or limit in any way the right of AOL or Sub or any parent, subsidiary or affiliate of AOL or Sub to terminate Participant's employment or other relationship at any time, with or without cause.

5. Remedy. Because Participant's breach of Section 1 of this Agreement will cause AOL irreparable harm for which money is inadequate compensation, AOL will be entitled to immediate injunctive and other preliminary and equitable relief against any material breach or threatened breach of this Agreement, in addition to damages and any other available remedies.

6. Assignment; Successors. Due to the unique nature of the services to be provided hereunder, Participant may not delegate his or her duties under this Agreement. This Agreement is binding upon and inures to the benefit of AOL and Sub and their successors and assigns.

7. Modification. This Agreement may be modified or amended only by a writing signed by AOL, Sub and Participant.

8. Governing Law. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflict of laws.

9. Severability. If any provision of this Agreement is to any extent invalid under applicable law, that provision shall be enforced to the extent permissible, and the remaining provisions of this Agreement shall continue in full force and effect.

10. Non-Waiver. No failure to delay by AOL or Participant in exercising any right or remedy under this Agreement shall waive any provision of this Agreement, nor shall any single or partial exercise by AOL or Participant of any right or remedy under the Agreement preclude any of them from otherwise or further exercising these rights or remedies, or any other rights or remedies by law or any related documents.

11. Captions. The headings in this Agreement are for convenience only and do not effect interpretation of this Agreement.

12. Entire Agreement. This Agreement, together with attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous and contemporaneous oral and written negotiations, agreements or other commitments.

13. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and hand delivered, or sent by facsimile, certified first class and hand delivered, or sent by facsimile, certified or registered first class mail, postage pre-paid, or sent by an internationally recognized express courier service. Such notices and other communications shall be effective upon receipt if personally delivered or on the next business day if sent by facsimile, three (3) business days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses, or such other addresses as either party shall notify the other party:

If to AOL:	America Online, Inc. 8619 Westwood Center Drive Vienna, VA 22182 Attn: Ellen M. Kirsh, Esq., General Counsel
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If to Participant:	At the address listed on the signature page hereto.
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14. Attorneys' Fees. In the event of any claim, demand arbitration or suit arising out of or with respect to this Agreement, the prevailing party shall be entitled to reasonable costs and attorneys' fees, including any such costs and fees upon appeal.

15. Arbitration Agreement. Any controversy between the parties regarding the construction or application of this Agreement, and any claim arising out of this Agreement or its breach, shall be submitted to arbitration on the written request of one party by the service of that

request on the other party. Such arbitration shall be held under the California Code of Civil Procedure, section 1280 et. seq., as amended.

~~[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]~~ 16.

Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signatures of the parties reflected hereon as signatories. Facsimile copies of such counterparts are acceptable.

IN WITNESS WHEREOF, this parties hereto have signed this Agreement as of the date first written above.

AMERICA ONLINE, INC.

PARTICIPANT

By: \_\_\_\_\_  
Name:  
Title:

Brewster Kahle  
Print Name

\_\_\_\_\_  
Signature

AOL ACQUISITION CORP.

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO NONCOMPETITION AND NONSOLICITATION AGREEMENT]

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and revised document: G:\FWPA-2\HBB\19649\310564.3

Deletions appear as overstruck text

Additions appear as bold+dbl underlined text